IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

CRL.A.No. 1560 of 2005()

SC.71/2003 of PRINCIPAL ASSISTANT SESSIONS COURT, THRISSUR
CP.53/2002 of JUDL. MAGISTRATE OF FIRST CLASS COURT I, VADAKKANCHERY

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APPELLANTS: ACCUSED

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1. MADHU, S/O.GANGADHARAN,
   EDAKKADAN HOUSE, THEKKUMKARA VILLAGE AND DESOM,
   THALAPPILLY TALUK.

2. RAJAN, S/O.KARUNAKARAN,
   ACHINGARA HOUSE, THEKKUMKARA VILLAGE AND DESOM,
   THALAPPILLY TALUK.

BY ADV. SRI.MADHU RADHAKRISHNAN

RESPONDENT: COMPLAINANT

STATE OF KERALA, REPRESENTED BY EXCISE
INSPECTOR, WADAKKANCHERRY EXCISE RANGE,
REPRESENNTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI. THOMAS JOHN AMBOOKKAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 17/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 1560 OF 2005

Dated this the 17th day of August, 2007

JUDGMENT

When this appeal came up for hearing today, it is noted that the judgment impugned is passed by the Principal Assistant Judge, Thrissur. By the impugned judgment, the accused - appellants herein were convicted under Section 8(1) read with Section 8(2) of the Abkari Act and they were sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,00,000/- each and in default of payment of fine, to undergo simple imprisonment for a further period of three months.

2. As per Section 374 Cr.P.C. any person convicted on a trial held by an Assistant Sessions Judge in which the sentence of imprisonment is less than seven years may appeal to the Court of Session. Further, as per Section 10 Cr.P.C,, all Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose court they exercise jurisdiction. In the above circumstances, the appeal against the impugned judgment ought to have been filed before the Sessions Court concerned. The appellants are,

therefore, permitted to withdraw the appeal and file the same before the Sessions Court. The bail granted by this Court shall continue on the same terms and conditions. It is also made clear that if the appeal is re-presented before the Sessions Court, the delay occurred shall be condoned by the Sessions Court.

The Crl. Appeal is accordingly dismissed as withdrawn. The Appeal Memorandum and all other documents including the lower court records shall be returned to the counsel for the appellants.

(K.THANKAPPAN, JUDGE)

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